Snow v. Doubleday et al
Doc. 5 Att. 9

EXHIBIT J

Dockets.Justia.com

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SHERA PAGLINAWAN and STUART OSWALD individually and on behalf of all others similarly situated, Plaintiffs, vs. JAMES FREY and JANE DOE FREY, individually and the marital community comprised thereof; NAN A. TALESE/DOUBLEDAY a division of RANDOM HOUSE, INC. a New York corporation, Defendants.	No. CLASS ACTION COMPLAINT

Plaintiffs, Shera Paglinawan and Stuart Oswald, by their undersigned attorneys, bring this civil action for damages and declaratory relief on behalf of themselves and all others similarly situated against the above-named Defendants and complain and allege as follows:

MYERS & COMPANY, P.L.L.C.
1809 SEVENTH AVENUE, SUITE 700
SEATTLE, WASHINGTON 98101
TELEPHONE (206) 398-1188

I. NATURE OF ACTION

1.1 Plaintiffs bring this action as a Class Action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased the novel A Million Little Pieces from a seller located in the State of Washington or who read the book and are residents of the State of Washington.

1.2 A Million Little Pieces was written by Mr. James Frey and published and distributed by Nan A. Talese/Doubleday, a subsidiary of Random House, Inc.

1.3 A Million Little Pieces was purportedly a memoir and was advertised and marketed as such by Nan A. Talese/Doubleday. The book was written in the first person and claimed to tell the true story of James Frey, chronicling Mr. Frey's struggles with crime, alcohol and drug addiction.

1.4 In reality, Mr. Frey fabricated large portions of A Million Little Pieces and Nan A. Talese/Doubleday was aware of these fabrications.

1.5 As a result of the Defendants' actions the Plaintiffs have suffered economic damage and emotional distress.

II. PARTIES

2.1 Plaintiff Shera Paglinawan has at all material times been a resident of Seattle, Washington.

2.2 Plaintiff Stuart Oswald has at all material times been a resident of Seattle, Washington.

2.3 Defendant James Frey is, upon information and belief, a resident of New York.

2.4 Defendant Nan Talese A. Talese/Doubleday is a business subsidiary of Random House, a New York corporation.

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III. JURISDICTION AND VENUE

3.1 Subject matter jurisdiction is proper under 28 U.S.C. § 1332(a)(1) because the Plaintiffs and Defendants are citizens of different states and the amount in controversy exceeds $75,000.00. This court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

3.2 Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(a) because the Defendants systematically and continuously sold their product within this district and Defendants transact business within this district.

IV. CLASS ACTION ALLEGATION

4.1 Plaintiffs bring this suit as a class action pursuant to Rules 23(a), (b)(1), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure, on behalf of themselves and a Plaintiff Class (the "Class") composed of all persons who purchased A Million Little Pieces by James Frey from a vendor in the State of Washington and on behalf of all residents of the State of Washington who have read A Million Little Pieces. Plaintiffs reserve the right to modify this class definition prior to moving for class certification.

4.2 This action has been brought and may be properly maintained as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure for the following reasons:

a. The Class is ascertainable and there is a well-defined community of interest among the members of the Class;

b. Membership in the Class is so numerous as to make it impractical to bring all Class members before the Court. The identity and exact number of Class members is unknown but is estimated to be at least in the thousands considering the fact that A Million Little

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Pieces has sold over 3.5 million copies. Plaintiffs believe that members of the Class can be identified through Nan A. Talese/Doubleday and Random House's sales records.

c. Plaintiffs' claims are typical of those of other Class members, all of whom have suffered harm due to Defendants' uniform course of conduct.

d. Plaintiffs are members of the Class.

e. There are numerous and substantial questions of law and fact common to all of the members of the Class which control this litigation and predominate over any individual issues pursuant to Rule 23(b)(3). The common issues include, but are not limited to, the following:

i. Does the Washington Consumer Protection Act Apply?

ii. Were Defendants' representations false?

iii. Were Defendants aware of the falsity of their representations?

iv. Was there a valid contract between the parties?

v. Were Plaintiffs and Class members damaged?

f. These and other questions of law or fact which are common to the members of the Class predominate over any questions affecting only individual members of the Class;

g. Plaintiffs will fairly and adequately protect the interests of the Class in that Plaintiffs have no interests that are antagonistic to other members of the Class and have retained counsel competent in the prosecution of class actions to represent themselves and the Class;

h. Without a class action, the Class will continue to suffer damage, Defendants' violations of the law or laws will continue without remedy, and Defendants will continue to enjoy the fruits and proceeds of their unlawful misconduct;

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i. Given (i) the substantive complexity of this litigation; (ii) the size of individual Class members' claims; and (iii) the limited resources of the Class members, few, if any, Class members could afford to seek legal redress individually for the wrongs Defendants have committed against them;

j. This action will foster an orderly and expeditious administration of Class claims, economies of time, effort and expense, and uniformity of decision;

k. Inferences and presumptions of materiality and reliance are available to obtain class-wide determinations of those elements within the Class claims, as are accepted methodologies for class-wide proof of damages; alternatively, upon adjudication of Defendants' common liability, the Court can efficiently determine the claims of the individual Class members;

l. This action presents no difficulty that would impede the Court's management of it as a class action, and a class action is the best (if not he only) available means by which members of the Class can seek legal redress for the harm caused them by Defendants.

m. In the absence of a class action, Defendants would be unjustly enriched because they would be able to retain the benefits and fruits of their wrongful conduct.

4.3 The Claims in this case are also properly certifiable under applicable law.

V. STATEMENT OF FACTS

5.1 In 2002 James Frey presented a manuscript to Nan Talese, a publisher at Nan A. Talese/Doubleday. This manuscript was in the form of a novel. This manuscript formed the basis of A Million Little Pieces.

5.2 Ms. Talese informed Mr. Frey that Nan A. Talese/Doubleday would publish the manuscript if he recast the novel as a memoir.

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5.3 In 2003 Nan A. Talese/Doubleday published A Million Little Pieces by James Frey. The book was purportedly a memoir and was advertised and marketed as such by Nan A. Talese/Doubleday. The book was written in the first person and claimed to tell the true story of James Frey, chronicling Mr. Frey's struggles with crime, alcohol and drug addiction.

5.4 A Million Little Pieces has sold over 3.5 million copies to date.

5.5 In 2004 Oprah Winfrey added A Million Little Pieces to her well known book club.

5.6 Investigations have revealed that Mr. Frey fabricated large portions of A Million Little Pieces.

5.7 Plaintiff, Shera Paglinawan, received A Million Little Pieces as a gift from her mother and began reading the book before news of the book's falsity was disseminated.

5.8 Plaintiff, Stuart Oswald, purchased A Million Little Pieces in King County and began reading the book before news of the book's falsity was disseminated.

5.9 As a result of the Defendants' actions the Plaintiffs and other Class members have suffered economic damage.

VI. CAUSES OF ACTION

A. Breach of Contract

6.1 Plaintiffs reallege all prior allegations as though fully stated herein.

6.2 Plaintiffs and Class members purchased and/or read A Million Little Pieces based on the Defendants' representations that it was a truthful memoir.

6.3 Defendants' representations were false and its sales of A Million Little Pieces constitute a breach of contract.

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6.4 As a result of the breach Plaintiffs and Class members suffered damages which may fairly and reasonably be considered as arising naturally from the breach or may reasonably be supposed to have been in the contemplation of the parties, at the time they made the contract, as the probable result of the breach of it.

B. Unjust Enrichment

6.5 Plaintiffs reallege all prior allegations as though fully stated herein.

6.6 Defendants were and continue to be unjustly enriched by their false representations as to the truthfulness of A Million Little Pieces in an amount to be proven at trial.

C. Negligent Misrepresentation

6.7 Plaintiffs reallege all prior allegations as though fully stated herein.

6.8 Defendants owed Plaintiffs and Class members a duty to exercise reasonable care in advertising the truthfulness of A Million Little Pieces.

6.9 Defendants provided false information to Plaintiffs and Class members relating to the truthfulness of A Million Little Pieces.

6.10 Defendants breached their duty to Plaintiffs and other Class members by failing to exercise reasonable care or competence in guaranteeing the truthfulness of A Million Little Pieces.

6.11 Plaintiffs and Class members reasonably relied on the information provided by Defendants regarding the truthfulness of A Million Little Pieces.

6.12 As a proximate cause of Defendants' false representations Plaintiffs and other Class members suffered damages in an amount to be proven at trial.

D. Intentional Misrepresentation (Deceit)

6.13 Plaintiffs reallege all prior allegations as though fully stated herein.

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6.14 Defendants made representations of fact regarding the truthfulness of A Million Little Pieces for the purpose of inducing Plaintiffs and other Class members to purchase and/or read the book.

6.15 Defendants knew or believed the representations referred to in the preceding paragraph were false.

6.16 Plaintiffs and other class members reasonably relied on Defendants' false representations.

6.17 As a result of Defendants' false representations Plaintiffs and other Class members suffered damages in an amount to be proven at trial.

E. Washington Consumer Protection Act Violation – RCW 19.86, *et seq.*

6.18 Plaintiffs reallege all prior allegations as though fully stated herein.

6.19 At all times relevant to this action Washington had in effect RCW Ch. 19.86 prohibiting unfair or deceptive acts or practices in the conduct of business.

6.20 Defendants' false claims regarding the truthfulness of A Million Little Pieces constituted unfair or deceptive acts or practices in the conduct of trade or commerce.

6.21 Defendants' acts or practices have the capacity to deceive a substantial portion of the public and to affect the public interest.

6.22 As a result of Defendants' unfair or deceptive acts or practices, Plaintiffs and other Class members suffered injuries in an amount to be proven at trial.

F. Declaratory Judgment

6.23 Plaintiffs reallege all prior allegations as though fully stated herein.

6.24 Plaintiffs and the Class, pursuant to Rule 57 of the Federal Rules of Civil Procedure and 18 U.S.C. § 2201(a), hereby seek a declaratory judgment that Defendants'

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conduct in misleading purchasers and readers of A Million Little Pieces violated the Washington Consumer Protection Act and breached their implied or express contract with purchasers and readers of the book.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and Class members request that the Court enter an order of judgment against Defendants including the following:

A. Certification of the action as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure with respect to Plaintiffs' claim for injunctive and declaratory relief, and Rule 23(b)(3) of the Federal Rules of Civil Procedure with respect to the claims for damages, and appointment of Plaintiffs as Class Representatives and their counsel of record as Class Counsel;

B. A declaration that Defendants violated the Washington Consumer Protection Act;

C. A declaration that Defendants breached their explicit of implicit contract with readers and purchasers of A Million Little Pieces.

D. Damages in the amount of monies paid for A Million Little Pieces.

E. Damages for the time spent by Plaintiffs and Class members reading A Million Little Pieces.

F. Actual damages (including all general, special, incidental, and consequential damages), statutory damages (including treble damages), and such other relief as provided by the statutes cited herein;

G. Prejudgment and post-judgment interest on such monetary relief;

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H. Equitable relief in the form of restitution and/or disgorgement of all unlawful or illegal profits received by Defendants as a result of the unfair, unlawful and/or deceptive conduct alleged herein;

I. Other appropriate injunctive relief;

J. The costs of bringing this suit, including reasonable attorneys' fees; and

K. Such other relief as this Court may deem just, equitable and proper.

DATED this 19th day of January, 2006.

MYERS & COMPANY, P.L.L.C.

Attorneys for Plaintiffs and Class members

By: /s/ Michael David Myers

Michael David Myers
WSBA No. 22486
Myers & Company, P.L.L.C.
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JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
Shera Paglinawan and Stuart Oswald, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff: King County, WA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Myers & Company, PLLC, 1809 7th Ave., Suite 700
Seattle, WA 98101; (206) 398-1188

DEFENDANTS
James Frey and Jane Doe Frey; Nan A. Talese/ Doubleday a division of Random House, Inc.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☒ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☒ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence
- Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
U.S. Civil Statute: 28 U.S.C. 1332(a)(1); 28 U.S.C. 1367
Brief description of cause:
Breach of contract, negligent & intentional misrepresentation and Consumer Protection Act violation

VII. REQUESTED IN COMPLAINT:
☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND $
CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE ______ DOCKET NUMBER ______

DATE ______ SIGNATURE OF ATTORNEY OF RECORD ______

FOR OFFICE USE ONLY

RECEIPT # ______ AMOUNT ______ APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______

JS 44 Reverse (Rev. 11/04)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. **(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. **Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Donna M Jackson/WAWD/09/USCOURTS
01/20/2006 11:24 AM

To PaulaMcN@hotmail.com
cc Paula McNabb/WAWD/09/USCOURTS@USCOURTS
bcc
Subject Fw: Paglinawan, et al. v. Frey, et al.

Receipt # for case C06-0099RSM is: 320755. S/iss.

~dj
----- Forwarded by Donna M Jackson/WAWD/09/USCOURTS on 01/20/2006 11:23 AM -----

"Tianna Pak" <tpak@myers-company.com>
01/19/2006 04:32 PM

To <newcases.seattle@wawd.uscourts.gov>
cc
Subject Paglinawan, et al. v. Frey, et al.

Dear Clerk of the Court:

Attached please find the following:

1) Class Action Complaint;
2) Summons to Defendant Frey;
3) Summons to Defendant Random House, Inc.

We ask that you please file the same and let our office know if any filing fees are required. Thank you for your assistance in this matter.

Tianna J. Pak
Myers & Company, p.l.l.c.
1809 Seventh Avenue, Suite 700
Seattle, Washington 98101
Telephone (206) 398-1188
Facsimile (206) 400-1117

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2006.01.18.Class Action Complaint.Federal.pdf 2006.01.19.Summons.Frey.pdf 2006.01.19.Summons.Random House.pdf

EXHIBIT K

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

FILED

FEB 02 2006

JAMES BONINI, Clerk
CINCINNATI, OHIO

Jill Giles on Behalf of Herself
and a Class of Persons Similarly Situated,
2019 Edgecliff Point
Cincinnati, OH 45206

Plaintiff,

v.

James Frey
Address Unknown
New York, New York

and

Random House, V.G. Inc.
1745 Broadway
New York, New York, 10019

AGENT FOR SERVICE
OF PROCESS

Katherine J Trager
1745 Broadway
New York, New York 10019

Defendants.

Case No. 1:06CV058

Judge: WEBER, J.

CLASS ACTION COMPLAINT
JURY DEMAND INDORSED HEREON

CLASS ACTION COMPLAINT

Plaintiff Jill Giles, on her behalf and on behalf of similarly situated individuals, states as follows:

SUMMARY

1. This is a Class Action brought by Jill Giles, on behalf of herself and all other similarly situated persons (the "Class"), who have purchased the book or media adaptation of "A Million Little Pieces" since its publication in April 2003. The Defendant Random House has,

since the book's publication, marketed and distributed the book as a book of "non-fiction" or as a "non-fiction memoir," when in fact, the book, by the author's own admission is replete with fictional and concocted stories. In short, Plaintiff and the putative class of individuals she represents purchased this book under false pretenses due to being misled by the Defendant James Frey and his publisher Random House, Inc.

JURISDICTION AND VENUE

2. Plaintiff realleges Paragraph 1 of this Class Action Complaint and incorporates by reference herein as if fully rewritten.

3. Plaintiff Jill Giles ("Giles") is and at all times mentioned herein, a citizen and resident of the County of Hamilton, State of Ohio. She had purchased her book from Joseph Beth Bookstore in Hamilton County, State of Ohio.

4. James Frey is and at all times mentioned herein, a citizen and resident of the state of New York.

5. Defendant Random House, Inc. ("Random House") is a New York corporation which publishes and distributes reading material such as fiction and non-fiction books. Random House's principal place of business is in New York, and doing business here in the state of Ohio as a distributor and seller of books and other such media adaptation of the book.

6. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act ("CAFA"), codified at 28 U.S.C. §1332(d), 1453, because: (1) the putative class action consists of at least 100 proposed class members; (2) the citizenship of at least one putative class member is different from that of Defendant; and (3) the aggregate amount in controversy by the claims of the plaintiffs and the proposed class members exceeds the sum or value of $5,000,000, exclusive of interest and costs.

7. Venue is proper in this District pursuant to 28 U.S.C. §1391(a) because a substantial part of the events or omissions giving rise to the claim occurred here.

GENERAL ALLEGATIONS

8. Plaintiff realleges Paragraphs 1 through 7 of this Class Action Complaint and incorporates by reference herein as if fully rewritten.

9. In April 2003 Random House published the book entitled "A Million Little Pieces" authored by Defendant James Frey (hereinafter referred to as the "Book"). Random House marketed the Book as a "memoir" and a work of "non-fiction."

10. Central to the Book is the author's assertions that he was charged with assaulting an Ohio police officer with his car, with inciting a riot, with possession of crack cocaine and felony drunk driving-charges that he wrote resulted in a three-month prison term.

11. An Internet Web-Site called the "Smoking Gun," owned and operated by Court TV, reported in January 2006 that most of those claims were false, and not borne out by police records.

12. On January 26, 2006 Defendant Frey appeared on the syndicated television program Oprah, and admitted that the assertions contained in herein of this Complaint were false, among other assertions contained in the Book.

13. At the time Frey wrote the Book, Frey knew that the assertions contained in the Book were false.

14. At the time Random House published the Book, it knew or should have known that the assertions contained in herein of this Complaint were false, especially because the falsity of these statements were borne out by public records.

ALLEGATIONS PERTAINING TO THE PLAINTIF

15. Plaintiff realleges Paragraphs 1 through 14 of this Class Action Complaint and incorporates by reference herein as if fully rewritten.

16. Plaintiff, Jill Giles, after observing advertisements from Defendants in various media, purchased the Book from Joseph Beth Bookstore in Hamilton County, Ohio believing that the Book was a non-fictional recount of Defendant James Frey.

17. After purchasing the book, Plaintiff read the book and continued to believe that the book was a true recount of James Frey as continued media and advertisements about the book continued.

18. Central to the Book is the author's assertions that he was charged with assaulting an Ohio police officer with his car, with inciting a riot, with possession of crack cocaine and felony drunk driving-charges that he wrote resulted in a three-month prison term.

19. On or about January 26, 2006 Defendant Frey appeared on the syndicated television program Oprah, and admitted that the assertions contained in herein of this Complaint were false, among other assertions contained in the Book.

20. At the time Frey wrote the Book, Frey knew that the assertions contained in the Book were false.

21. At the time Random House published the Book, it knew or should have known that the assertions contained in herein of this Complaint were false, especially because the falsity of these statements were borne out by public records.

22. Plaintiff had believed from statements and advertisements that the book was accurate and non-fictional at the time of purchases and was induced to purchase the book by such assertions by and through the Defendants that the contents were non-fictional

CLASS ACTION ALLEGATIONS

23. Plaintiff realleges Paragraphs 1 through 22 of this Class Action Complaint and incorporates by reference herein as if fully rewritten

24. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of a Class. The Class consists of:

> All individuals who had purchased the book or other such media titled "A Million Little Pieces" authored by Defendant James Frey (hereinafter referred to as the "Book") published and distributed by Random House.

25. The Class is also hereby divided into a subclass:

> All residents of the State of Ohio who had purchased the book or other such media titled "A Million Little Pieces" authored by Defendant James Frey (hereinafter referred to as the "Book") published and distributed by Random House (the "Subclass").

26. Excluded from the Class are the Defendants, any person or other entity employed by, related to, or affiliated with Defendants, the judge assigned to this case and his or her staff, and counsel of record for Plaintiff and Defendants.

27. Plaintiff is a member of the Class she seeks to represent and a member of the Subclass.

28. On information and belief, the Class and the Subclass are each believed to include hundreds of persons who purchased this book or similar media. As a result, joinder of all Class members in a single action is impracticable.

29. Plaintiff brings this action on her own behalf and, pursuant to Fed. R. Civ. P. Rules 23(a), (b)(1), (b)(2) and (b)(3), on behalf of a class of all individuals that purchased, between April 2003 and January 16, 2006, the Book.

30. The members of the Class are so numerous that joinder of all members is impracticable. At this time, Plaintiff does not know the exact size of the Class, which can only

be ascertained through discovery. However, Plaintiff believes that thousands of present and former purchasers of the Book purchased the Book based on the way in which Random House falsely marketed the Book.

31. There exist questions of law and fact common to all members of the Class, and which predominate over any questions which only affect individual Class members. These common questions of law and fact include:

a. What steps Random House took, prior to publishing the Book, the truth or veracity of Defendant Frey's assertions.

b. Whether Defendants breached a duty owed to the public to ascertain the truthfulness of the contents before publishing and marketing.

c. Whether Defendants' knew of the falsity of the statements at the time they were published; and

d. Whether Defendants have engaged in a common scheme or course of conduct in the marketing, sales and promotion of the Book whereby Class Members have been induced to purchase the Book and associated media by false representations or by fraudulent representations

e. Whether as a result of its representation, promises and agreements contained in promotions and marketing, Defendants are estopped from collecting and charging for the sale of the book and associated media.

f. Whether selling this book under deceptive practices has unjustly enriched Defendants.

g. Whether Defendants intentionally have and continue to sell and market the book as non-fictional

h. Whether Defendants' conduct violates the Ohio Deceptive Practice and Consumer Protection Acts.

i. Whether the Class is entitled to damages.

32. Since Plaintiff and all other members of the Class sustained injury as a result of Defendants' wrongful acts, Plaintiff's claims are typical of the claims of the other members of the Class.

33. Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff has retained able counsel with extensive experience in class action litigation.

34. The interests of the Plaintiff are coincident with and not antagonistic to the interests of the other Class members.

35. Prosecution of separate actions by members of the Class would create a risk of inconsistent adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants.

36. Furthermore, adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

37. Since joinder of all members of the Class is impracticable, a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Further, because the injury suffered by the individual Class members may be relatively small, the expense and burden of individual litigation makes it impracticable for the Class members

individually to redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

COUNT I
(Misrepresentation and Nondisclosure-James Frey)

38. Plaintiff realleges and incorporates herein by reference all of the allegations set forth above.

39. At all relevant times Defendant Frey, by his own admission, knew that the assertions contained herein of this Complaint were untrue, and knew that the Book was not a non-fictional memoir. Nonetheless, he allowed and authorized his publisher Random House to publish the Book as a non-fictional memoir, making these false assertions.

40. Frey made the false assertions and agreed to represent the Book as a non-fictional memoir, with the expectation that people would believe these falsehoods in hope that he would personally profit by being able to sell the Book to the public and did profit from such sales of over 2 million copies

41. Defendant Frey made such false assertions and representations to gain publicity to increase sales and popularity of the Book.

42. Plaintiff and the putative class did rely on the truth of false characterizations of the Book as a non-fictional memoir when they purchased the Book.

43. Plaintiff and the putative class have been injured as a result of their reliance on the above-described false representations.

COUNT II
(Negligent Misrepresentation-Random House and Frey)

44. Plaintiff realleges and incorporates herein by reference all of the allegations set forth above.

45. Defendants Random House and Frey owed the Plaintiff and the class a duty to market the Book honestly. Defendant Random House owed the Plaintiff and the class a duty to investigate the truth of Frey's assertions before it marketed the Book as a non-fictional memoir.

46. Defendant breached his duty by falsely representing the Book as a non-fictional memoir to Random House. Random House breached its duty by failing to make a reasonable investigation into the truth or falsity of Frey's assertions.

47. Defendant Random House profited from such sales of over 2 million copies

48. Defendant Random House made such false assertions and representations to gain publicity to increase sales and popularity of the Book.

49. As a consequence of these breaches, the Plaintiff and the class suffered losses and damages.

50. Defendants are personally liable to refund the entire purchase price of every Book that has been sold to the Plaintiff and the class

COUNT III
(Fraud)

51. Plaintiff realleges and incorporates herein by reference all of the allegations set forth above.

52. Defendants knowingly, fraudulently, and actively misrepresented in advertisements and through the media that the Book entitled "A Million Little Pieces" authored by Defendant James Frey (hereinafter referred to as the "Book") was a "memoir" and a work of "non-fiction."

53. Central to the Book is the author's assertions that he was charged with assaulting an Ohio police officer with his car, with inciting a riot, with possession of crack cocaine and felony drunk driving charges that he wrote resulted in a three-month prison term and knew at the

time that he wrote the book that most of those claims were false, and not borne out by police records.

54. At the time Frey wrote the Book, Frey knew that the assertions contained in the Book were false.

55. At the time Random House published the Book, it knew or should have known that the assertions contained in herein of this Complaint were false, especially because the falsity of these statements were borne out by public records.

56. Defendants fraudulently, with knowledge and intent, stated that the Book was a non-fictional recount of experiences of James Frey. Therefore, Defendants, with knowledge and intent issued fraudulent marketing and advertisements to Plaintiffs and the Class Members when they knew or by due diligence should have known that such statements were false, hereinafter referred to "Deceptive Practices."

57. Defendants had a duty to properly market and advertise the Book to the Plaintiff and Class Members and not intentionally misrepresent the contents to the Plaintiff and Class Members.

58. Defendants made the aforementioned misrepresentations with knowledge of the falsity of said representation or with reckless disregard as to the truth of the representations.

59. Defendants acted with the intention of deceiving Plaintiffs and Class Members and did in fact deceive Plaintiffs and Class Members as to the contents of the book.

60. Defendants acted with the intention of inducing Plaintiff and Class Members to rely on the false misrepresentation presented by Defendants as to the content of the Book to induce sales of the book.

61. Plaintiff and Class Members did in fact rely on the fraudulent misrepresentations of Defendants and purchased the Book and associated media.

62. Plaintiff's and Class Members' reliance were justified.

63. As a result of the false and fraudulent and intentional misrepresentation by Defendants, Plaintiff and Class Members have been damaged and are entitled to compensatory damages, attorney fees, and costs.

64. The conduct of Defendants was willful, wanton, malicious, oppressive, gross and egregious conduct, and evidence of Defendants' reckless disregard for the truth or falsity of the representations of the content of the book. As such, Plaintiff and Class Members are entitled to punitive damages.

COUNT IV
(Promissory Estoppel)

65. Plaintiff realleges and incorporates herein by reference all of the allegations set forth above.

66. As a result of the Defendants' Deceptive Practices, Plaintiffs and the Class induced Plaintiffs and the Class Members to purchase the Book.

67. In reasonable reliance upon Defendants' Deceptive Practices, Plaintiff and Class Members purchased the Book and associated media.

68. Plaintiff's and Class Members' reliance upon Defendants' Deceptive Practices with respect to purchasing the book was reasonably foreseeable.

69. Plaintiffs and Class Members relied upon Defendants' Deceptive Practices to their detriment, and as a direct and proximate result of the Defendants' Deceptive Practices, Plaintiff and Class Members have suffered losses.

70. As a result of Defendants' Deceptive Practices, Plaintiff and Class Members are entitled to compensatory damages, attorney fees, and costs.

COUNT V
(Unjust Enrichment)

71. Plaintiff realleges and incorporates herein by reference all of the allegations set forth above.

72. Plaintiff and Class Members have been charged and have paid for the book and associated media as a result of Defendants' Deceptive Practices.

73. Defendants have been unjustly enriched at the expense of the Plaintiff and Class Members by their deceptive, misleading, and wrongful Defendants' Deceptive Practices.

74. Plaintiff and Class Members are entitled to damages as a result of the unjust enrichment of Defendants, including the return of all revenues obtained by Defendants as a result of selling the book and associated media.

COUNT VII
(Violation of the Ohio Deceptive Trade Practices Act)

75. Plaintiff realleges and incorporates herein by reference all of the allegations set forth above.

76. In the Defendants' promotions and marketing of the Book, Defendants have made and continue to make deceptive, false and misleading statements concerning the authenticity and contents of the Book relating to the fact that the Book purports to be a non-fictional recount of the experiences of James Frey

77. Those false and misleading statements deceived Plaintiff and Class Members and deceived a substantial segment of the target audience.

78. Defendants' deception is material as it has influenced purchasing decisions.

79. Plaintiff and Class Members have been damaged as a result of Defendants' deceptions.

80. Defendants have violated the Ohio Deceptive Trade Practices Act, O R C 4165 01 *et seq*.

81. As a result of Defendants' violation, Plaintiff and Class Members are entitled to recover compensatory damages, attorneys' fees, and costs.

82. As said violation was willful, wanton, and malicious, Plaintiff and Class Members are entitled to punitive damages.

83. Plaintiff and Class Members are likely to continue to be damaged by Defendants' deceptive practices, and, accordingly, are entitled to an injunction against Defendants to prohibit Defendants from continuing these deceptive practices and the sale of the Book and associated media.

COUNT VIII
(Consumer Sales Practice Act)

84. Plaintiff realleges and incorporates herein by reference all of the allegations set forth above.

85. Plaintiff, the Class and the Subclass Members are "person" engaged in a consumer transaction or trade and commerce as defined by the Ohio Consumer Protection Act, ORC 1345, et seq.

86. Defendants were engaged and continue to engage to promote, sell and market the Book and associated media based upon false representations as to the content of the Book in order to induce sales. This conduct constitutes unfair, unconscionable, and deceptive acts on the part of Defendants in violation of the Ohio Consumer Protection Act, ORC 1345, et seq.

87. Plaintiff, the Class and the Subclass Members have been damaged as a result of Defendants' unfair, deceptive, and unconscionable acts or practices. As a result, Plaintiff, the Class

and the Subclass. Members are entitled to recover compensatory damages, treble damages, attorneys' fees, and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and members of the Class and the Subclass respectfully request that this Court grant the following relief the Defendant:

1) That this action may be maintained as a class action under Rule 23(a) and (b)(2) and/or (b)(3) of the Federal Rules of Civil Procedure, and that notice to the Class and the Subclass be provided in compliance with Fed. R. Civ. P. 23(c)(3), and appointing Plaintiff as the representatives of the Class and the Subclass and Plaintiff's counsel as counsel for the Class and the Subclass;

2) Ordering Defendant to immediately stop selling the Book and other such media renditions, at Defendant's expense;

3) Awarding Plaintiff and members of the Class and the Subclass compensatory, and punitive damages, and restitution, in an amount to be proven at trial;

4) Awarding the Class and Subclass their costs and expenses in this litigation, including, but not limited to, expert fees and reasonable attorneys' fees;

5) That the Court award Plaintiff and members of the Class and the Subclass such other and further relief as may be necessary and appropriate.

Respectfully submitted

Alan J. Statman (0012045)
Colleen M. Hegge (0038506) (of counsel)
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ATTORNEYS FOR PLAINTIFF

JURY DEMAND:

Plaintiff, individually and on behalf of the class she seeks to represent, hereby respectfully requests a trial by jury.

Colleen M. Hegge

EXHIBIT L

RECEIPT NUMBER
558443

9

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GREGORY R. RIVARD, Individually, and on Behalf of All Other Similarly Situated Consumers,

Plaintiff,

vs.

RANDOM HOUSE, INC., a New York corporation,

Defendant.

Case: 2:06-cv-10759
Assigned To : Feikens, John
Referral Judge: Komives, Paul J
Assign. Date : 02/21/2006 @ 10:49 a.m.
Description: cmp gregory r. rivard v. random house (tam)

E. POWELL MILLER (P39487)
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MARK S. BAUMKEL (P27613)
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30200 Telegraph Rd., Ste. 200
Bingham Farms, MI 48025
(248) 642-0444

CLASS ACTION COMPLAINT AND JURY DEMAND

Plaintiff Gregory R. Rivard, by his attorneys, Miller Shea, P.C. and Provizer & Phillips, P.C., states as follows:

JURISDICTION AND VENUE

1. Plaintiff is a Michigan resident.

2. Upon information and belief, Defendant, is a New York corporation, and regularly and systematically conduct business in this State and in this judicial district, and the events giving

rise to this case took place in this judicial district in the state of Michigan.

3. This is a class action in which the aggregate amount in controversy exceeds $75,000, exclusive of interest and costs, and this Court has jurisdiction pursuant to diversity of citizenship as described in 28 USC § 1332(d)(2), and venue pursuant to 28 USC § 1391(a). Subject matter jurisdiction is also premised on the Class Action Fairness Act of 2005. 28 U.S.C. § 1711.

CLASS ACTION AND FACTUAL ALLEGATIONS

4. Defendant has published, marketed, advertised, distributed, manufactured, and/or sold as a true autobiographical work of non-fiction concerning the actual real life factual experiences of the author a book entitled "A Million Little Pieces"

5. In truth, said book is largely a fictional non-factual account.

6. Defendant has distributed and sold millions of these books, including within Michigan and throughout the United States, and plaintiff is one of the millions of purchasers.

7. This is a class action suit which seeks recovery of damages and/or restitution in the form of purchase monies paid for purchase of said products by the named Plaintiff and the Plaintiff class. The named Plaintiff has sustained damage typical of the proposed class.

8. Plaintiff brings this action on her own behalf and on behalf of all other persons similarly situated.

9. The class which Plaintiffs seek to represent is composed, jointly or alternatively, of: all persons who, like the Plaintiff, bought one or more copies of the above described product (the "Class") prior to public acknowledgment by Defendant that the book was largely fictional.

10. The class is composed of millions of persons, the joinder of whom is impracticable. The disposition of their claims in a class action will benefit both the parties and the Court.

11. There are questions of fact and law which are common to all members of the class, and which predominate over any individual issues, including, inter alia, the following:

(a) Whether the Defendant negligently published, manufactured, marketed, advertised, distributed, and/or sold a product that was not what it purported to be-i.e. published, distributed and/or sold as a true factual account a largely fictional story);

(b) Whether Defendant has breached express and implied warranties;

(c) Whether Defendant has negligently and/or intentionally misrepresented and/failed to adequately disclose material information about the true nature of the product;

(d) Whether the class has been damaged, and if so, the appropriate measure of damages including the nature of injunctive and/or other equitable relief to which the class is entitled.

12. The above common issues of fact and law predominate over any arguable individualized issues; the principal common and identical issue being the deceptive representations described above.

13. Plaintiff's claims are typical of the claims of the other members of the class because Plaintiff and all of the class members' damages arise from and were caused by having purchased the subject product; and as a result, the evidence and the legal theories regarding Defendant's alleged wrongful conduct is identical for Plaintiff and all of the class members.

14. Plaintiff will fairly and adequately protect the interests of the members of the class and Plaintiff has no interests which are contrary to or in conflict with those of the class she seeks to represent. Plaintiff has retained competent counsel experienced in class action litigation to further ensure such protection and to prosecute this action vigorously.

15. The prosecution of separate actions by individual members of the class would create

an increased risk of inconsistent or varying adjudications with respect to individual members of the class, which would establish incompatible standards of conduct for the party opposing the class and would lead to repetitious trials of the numerous common questions of facts and law. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action. As a result, a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

16. Proper and sufficient notice of this action may be provided to the class members through notice published in appropriate publications and/or broadcast in appropriate media, posted on Defendant's internet web sites, and/or distributed by retailers of said product.

17. Absent representative action, it is unlikely that Plaintiff and other members of the putative class could justify the time and expense of litigation which would then allow Defendant to retain the proceeds of its ill-gotten gains.

18. That at all times relevant herein, Defendant published and distributed said product for re-sale to retail purchasers such as Plaintiffs.

19. The product simply is not what it purports to be-i.e., it was published and sold as a true account when in fact it is fiction, and consumers deserve and legally are entitled to restitution.

COUNT I

VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT
(Michigan only)

20. Plaintiffs re-allege all preceding paragraphs.

21. Defendant violated the Michigan Consumer Protection Act, MCL § 445.901, et. seq., by, inter alia:

(a) **Representing** that the goods have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have. MCL § 445.903(c);

(b) **Failing to adequately reveal** in advertising and/or at the time of purchase various **material facts**, the omission of which tends to mislead or deceive the consumer, and which facts could not reasonably be known by the consumer in violation of MCL § 445.903(s), (bb) & (cc).

22. In fact, the named Plaintiff, being typical reasonable purchasers, would not have purchased and/or consumed the product if the Defendant had complied with the MCPA.

23. A reasonable consumer would want to know by clear disclosure before purchasing such product that the product is NOT, as represented, a true factual account of the author's experiences.

24. As a result of Defendant's violation of the Michigan Consumer Protection Act, Plaintiff and members of the class have incurred damages by purchasing the subject product.

25. Further, as a result of Defendant's conduct, Defendant has been and will be unjustly enriched by the receipt of millions of dollars in fees, profits and other monies from the wrongful distribution of the product to Michigan consumers which were sold through deceptive practices which affirmatively and by omission misrepresented the true nature of the product.

COUNT II

BREACH OF EXPRESS WARRANTY (Michigan and National)

26. Plaintiff re-alleges all preceding paragraphs.

27. Defendant published and distributed said book accompanied by descriptions giving the false impression that it had certain characteristics which it did not really have; e.g., that it was a true account of the author's personal experiences when actually it was a fictional story.

28. Plaintiff and members of the Plaintiff class purchased a supposed true account which was in reality a phony account and thereby sustained damage as above described as a proximate result of said breach of warranty.

COUNT III

UNJUSTENRICHMENT/RESTITUTION/DISGORGEMENT
(Michigan and National)

29. Plaintiff incorporates by reference all preceding paragraphs.

30. Defendant has taken in millions of dollars from the publication and distribution of said book, and currently now acknowledges and admits on its website that the book was sold as true but really is phony.

31. The named Plaintiff alleges that said moneys received by Defendant resulted from wrongful conduct as described above, as to which it would be unfair and inequitable for Defendant to retain said ill-gotten gains.

32. If Plaintiff proves her allegations she and all members of the class would be entitled to full restitution of all purchase monies and/or compensation for the reduced value of the product they received compared to the product represented by Defendant.

RELIEF REQUESTED

WHEREFORE, Plaintiff and members of the class of similarly situated consumers request the following relief:

A. Certification as a class action, together with such sub-classes as deemed appropriate and appointment of named Plaintiff and her counsel to represent the Class; Restitution of the purchase price paid by named Plaintiff for the product purchased by the named Plaintiff and on behalf of the entire class of consumers class wide notice and administrative costs to be awarded against Defendants;

B. Injunctive and/or equitable relief as deemed appropriate by the court, including but not limited to disgorgement of ill-gotten gains into a common fund for the benefit of the plaintiff class in such manner as to be determined by the court;

C. Interest, costs, and attorneys' fees (including actual attorney fees pursuant to consumer protection laws).

Respectfully submitted,

MILLER SHEA, P.C.

By: [signature]

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MARK S. BAUMKEL (P27613)
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Dated: February 17, 2006

JS 44 (REV. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

GREGORY R. RIVARD, Individually, and on behalf of all others similarly situated consumers

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Wayne, MI (EXCEPT IN U.S. PLAINTIFF CASES)

26163

DEFENDANTS

RANDOM HOUSE, INC.

COUNTY OF RESIDENCE OF FIRST LISTED New York, NY (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(C) ATTORNEYS (FIRM NAME, ADDRESS AND TELEPHONE NUMBER)
Miller Shea, P.C. E. Powell Miller (P39487)
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(248) 841-2200

ATTORNEYS (IF KNOWN)

JOHN FEIKENS **06-10759**

MAGISTRATE JUDGE KOMIVES

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX)

- [ ] 1 U.S. Government Plaintiff
- [X] 3 Federal Question (U.S. Government Not a Party)
- [ ] 2 U.S. Government Defendant
- [ ] 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	X 1	1	Incorporated or Principal Place of Business in This State	4	4
Citizen of Another State	2	X 2	Incorporated and Principal Place of Business in Another State	5	5
Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6

IV. NATURE OF SUIT *(PLACE AN "X" IN ONE BOX ONLY)*

CONTRACT
- 110 Insurance
- 120 Marine
- 130 Miller Act
- 140 Negotiable Instrument
- 150 Recovery of Overpayment & Enforcement of Judgment
- 151 Medicare Act
- 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- 153 Recovery of Overpayment of Veteran's Benefits
- 160 Stockholders' Suits
- 190 Other Contract
- 195 Contract Product Liability

TORTS

PERSONAL INJURY
- 310 Airplane
- 315 Airplane Product Liability
- 320 Assault, Libel & Slander
- 330 Federal Employers' Liability
- 340 Marine
- 345 Marine Product Liability
- 350 Motor Vehicle
- 355 Motor Vehicle Product Liability
- 360 Other Personal Injury

PERSONAL INJURY
- 362 Personal Injury—Med. Malpractice
- 365 Personal Injury—Product Liability
- 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- [X] 370 Other Fraud
- 371 Truth in Lending
- 380 Other Personal Property Damage
- 385 Property Damage Product Liability

FORFEITURE/PENALTY
- 610 Agriculture
- 620 Other Food & Drug
- 625 Drug Related Seizure of Property 21 USC 881
- 630 Liquor Laws
- 640 R.R. & Truck
- 650 Airline Regs
- 660 Occupational Safety/Health
- 690 Other

LABOR
- 710 Fair Labor Standards Act
- 720 Labor/Mgmt. Relations
- 730 Labor/Mgmt. Reporting & Disclosure Act
- 740 Railway Labor Act
- 790 Other Labor Litigation
- 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- 422 Appeal 28 USC 158
- 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- 820 Copyrights
- 830 Patent
- 840 Trademark

SOCIAL SECURITY
- 861 HIA (1395ff)
- 862 Black Lung (923)
- 863 DIWC/DIWW (405(g))
- 864 SSID Title XVI
- 865 RSI (405(g))

FEDERAL TAX SUITS
- 870 Taxes (U.S. Plaintiff or Defendant)
- 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- 400 State Reapportionment
- 410 Antitrust
- 430 Banks and Banking
- 450 Commerce/ICC Rates/etc.
- 460 Deportation
- 470 Racketeer Influenced and Corrupt Organizations
- 810 Selective Service
- 850 Securities/Commodities/Exchange
- 875 Customer Challenge 12 USC 3410
- 891 Agricultural Acts
- 892 Economic Stabilization Act
- 893 Environmental Matters
- 894 Energy Allocation Act
- 895 Freedom of Information Act
- 900 Appeal of Fee Determination Under Equal Access to Justice
- 950 Constitutionality of State Statutes
- 890 Other Statutory Actions

REAL PROPERTY
- 210 Land Condemnation
- 220 Foreclosure
- 230 Rent Lease & Ejectment
- 240 Torts to Land
- 245 Tort Product Liability
- 290 All Other Real Property

CIVIL RIGHTS
- 441 Voting
- 442 Employment
- 443 Housing/Accommodations
- 444 Welfare
- 440 Other Civil Rights

PRISONER PETITIONS
- 510 Motions to Vacate Sentence

HABEAS CORPUS
- 530 General
- 535 Death Penalty
- 540 Mandamus & Other
- 550 Civil Rights
- 555 Prison Condition

V. ORIGIN *(PLACE AN "X" IN ONE BOX ONLY)*

- [X] 1 Original Proceeding
- [ ] 2 Removed from State Court
- [ ] 3 Remanded from Appellate Court
- [ ] 4 Reinstated or Reopened
- [ ] 5 Transferred from another district (specify)
- [ ] 6 Multidistrict Litigation
- [ ] 7 Appeal to Judge from Magistrate Judgment

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUES UNLESS DIVERSITY)

28 USC § 1332(d)(2) and USC § 1711

VII. REQUESTED IN COMPLAINT: [ ] CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND $** CHECK YES only if demanded in complaint: JURY DEMAND: [X] YES [ ] NO

VIII. RELATED CASE(S) (See instructions): **IF ANY** JUDGE ______ DOCKET NUMBER ______

DATE February 17, 2006

SIGNATURE OF ATTORNEY OF RECORD [signature]

FOR OFFICE USE ONLY

RECEIPT # ______ AMOUNT ______ APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______

PURSUANT TO LOCAL RULE 83.11

1. Is this case that has been previously discontinued or dismissed? YES X NO

   If **yes**, give the following information:

   Court: ______________________

   Case No.: ______________________

   Judge: ______________________

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion caes are matters in which it appears substnatially similar evidence will be offered or the same or reltated parties are present and the cases arise out of the same transaction or occurrence.) YES X NO

   If **yes**, give the following information:

   Court: ____________

   Case No.: ____________

   Judge: ____________